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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 566 OF 2004

Shrimant Sanganbasappa Bake ... Appellant

V/s

The State of Maharashtra ... Respondent

None present for the appellant.

Smt. V.R. Bhosale, A.P.P. for the respondent.

CORAM: V.G. PALSHIKAR &
SMT. NISHITA MHATRE, JJ.

DATED: 20TH DECEMBER, 2006.

ORAL JUDGMENT (PER SMT. NISHITA MHATRE, J.):

1. Being aggrieved by the judgment and order of the III Additional Sessions Judge, Solapur, the appellant has preferred the present appeal. The Sessions Court has convicted and sentenced the appellant under Section 302 of the Indian Penal Code. He has also been directed to pay a fine of Rs.5,000/-.

2. The allegation of the prosecution against the appellant is that, on 26.3.2003, the victim, Mhantappa and the complainant were talking near the victim's

house. The appellant reached the spot on a motorcycle. He demanded an amount of Rs.100/- from the victim. Since the victim refused to accede to his demand, he used a hunting crop to assault the victim on the head. At that point of time, the accused, according to the prosecution had consumed liquor. The complainant tried to rescue the victim who was his maternal uncle. However, the appellant started brandishing the hunting crop so that the complainant could not reach close to the victim. The complainant raised an alarm and people from the village arrived at the spot. On their arrival, the accused left the spot. The victim was shifted to the hospital at Solapur. Since the necessary medical treatment was not available in that hospital, he was shifted to another private hospital. A surgery was performed on the victim, however, he succumbed to his injuries on the next day. After the complainant lodged the report with the police station, the appellant was arrested and charged for having murdered the victim. The trial was committed to the Sessions and the appellant has been convicted and sentenced as aforesaid.

3. The learned advocate for the appellant was absent. However, we felt it necessary to proceed with the matter since the appellant is languishing in jail. With the assistance of the learned A.P.P. we have scrutinised

the evidence on record and we find that we are unable to confirm the conviction and sentence of the appellant under Section 302 of the Indian Penal Code.

4. The prosecution has relied on the testimonies of two eye witnesses, PW-2 and PW-6. PW-2 is a neighbour of the victim. He has stated that, at about 11.00 pm, he heard somebody shouting. When he came out of his house he found the appellant assaulting the victim with a hunting crop which is popularly known as a "hunter". He was able to see the appellant as there was sufficient light around. When this witness tried to rescue the victim, the appellant threatened to kill him. Other villagers gathered at the spot. This witness has spoken about the presence of the complainant PW-6. PW-2 has stated that the victim had sustained an injury on his head because of the assault by the appellant. The witness has stated that after the villagers arrived at the spot, the appellant left on his motorcycle. The cross-examination of this witness has not led to any contradictions or admissions from him. He has stood by his deposition in the examination-in-chief.

5. PW-6 who is the complainant in this case, is a nephew of the victim. He has stated that he was talking to the victim under an electric pole when the appellant

came there on his motorcycle, under the influence of liquor. This witness has stated that the appellant demanded an amount of Rs.100/- from the victim which was denied to him. Immediately thereafter, according to this witness, the appellant took out a "hunter" which was at his waist and started assaulting the victim, who sustained a bleeding injury on his head. It was after PW-6 raised an alarm that his brother and other villagers reached the spot. This witness has then mentioned that he and some others from the village took the victim to a hospital. He was thereafter shifted to the private hospital of Dr. Katikar. In the cross-examination this witness has been asked questions relating to his business. He was running a shop which was similar to the one run by the victim. He was then being questioned about the Grampanchayat elections. This witness was an active member of one of the two groups who were active during the elections in their village. Although there are certain omissions in the evidence of this witness, they are not very material. The testimonies of PW-2 and PW-6 taken together, therefore, prove the case of the prosecution that the appellant had assaulted the victim with a hunting crop and that he had sustained a bleeding injury on his head.

6. The medical evidence has been established on record

through PW-5 and PW-8. PW-5 is the neuro-surgeon who operated on the victim when he was brought to hospital. He has stated that the C.T. scan of the patient revealed that there was a fracture involving the right frontal region and left partietal bone. Besides these injuries, there was intracerebral haemotoma in the left frontal lobe extending into the ventricular system. The witness has stated that the fracture of the frontal region was possible by the use of the hunter which was seized by the police. This witness has denied in the cross-examination that the victim died as a consequence of the surgery carried out on him. He has categorically stated that it was because of the injury sustained by the victim that he met with his death.

7. PW-8 is the medical officer who performed the post-mortem examination on the dead body of the victim. This witness has described the injuries sustained by the victim which are as follows:

> "(1) Sutured wound over left temporo parietal extending upto frontal region 9" in length semi lunar type with sutures intact minimal swelling.
>
> (2) Abrasion over left temporal region of size

2" x 1.1/2" with redness.

(3) Abrasion over left hypochonoriac region below last rib of size 2" x 2".

(4) Linear abrasion over right forearm in area 6" x 3" redish, blackish in colour with swelling (execussive).

(5) Abrasion over both knee joint of size 1/2" x 1/2" each.

(6) Old scar over mid sternal region (treated for mitral valvetomy previously)."

This witness has categorically stated that internal injuries correspond with the external injuries. He has opined that the probable cause of death was the head injury mentioned at Sr.No.1. That injury by itself, according to the doctor, was sufficient to cause death. He has agreed that the injury mentioned could have been inflicted with the front portion of the "hunter" (the stock of the hunting crop) which is hard and blunt. As regards the injuries at Sr. Nos. 2 to 5, the witness has opined that these injuries were not connected with the death of the victim as they were simple injuries.

8. The panch witnesses examined are PW-1, PW-3, PW-4 and PW-7. All the panch witnesses except PW-1 have been declared hostile. PW-1 has proved the spot panchanama. The other witnesses have denied the recovery of the hunting crop at the instance of the appellant and the recovery of his clothes. However, the recovery of these articles has been proved by the prosecution through the investigating officer who has been examined as PW-9. He has stated that the "hunter" was recovered at the instance of the appellant from his house. It was lying under a gunny bag filled with chillies.

9. From the evidence on record, we find that the eye witness accounts are corroborated by the medical evidence on record. Both the eye witnesses have stated that the victim was assaulted on the head by the appellant. The injuries found on the victim matched the statements of the eye witnesses. The hunting crop which has been recovered at the instance of the appellant was the weapon used by him to assault the victim. Both the doctors examined in this case have opined that the stock of the hunting crop could have been used to inflict the injuries on the head of the victim. Therefore, the prosecution has proved that the appellant has committed a culpable homicide. However, it would be necessary to

ascertain whether it amounts to murder. Both the doctors have opined that it is the injury on the head at Sr.No.1 which has caused the death of the victim. In fact, PW-8 has stated categorically that the other injuries could not be related to the death of the victim. Therefore, it is a single blow which has caused the death of the victim. While inflicting the injuries on the victim, the appellant, no doubt had the intention of causing such bodily injury as was likely to cause death.

10. In such circumstances, the conviction and sentence under Section 302 is set aside. Instead the appellant is convicted under Section 304 Part I of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 10 years.

11. Appeal accordingly disposed of.

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